

Alan L. Sullivan (#3152)  
Robert E. Mansfield (#6272)  
Todd Shaughnessy (#6651)  
Snell & Wilmer L.L.P.  
15 West South Temple, Suite 1200  
Beneficial Tower  
Salt Lake City, UT 84101-1004  
(801) 257-1900 Telephone  
(801) 257-1800 Facsimile  
Attorneys for Defendant

---

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

---

<p>GOOGLE, INC., a Delaware corporation,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>PACIFIC WEBWORKS, INC., a Nevada corporation,</p> <p style="text-align: center;">Defendant.</p>	<p style="text-align: center;"><b>ANSWER</b></p> <p style="text-align: center;">Civil No.: 2:09-cv-01068-BSJ</p> <p style="text-align: center;">Honorable Judge Bruce S. Jenkins</p>
--	--

Defendant Pacific Webworks, Inc. ("Webworks"), through counsel, hereby answers the complaint filed by Google, Inc. ("Google") as follows:

1. Webworks lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 and therefore denies the same.
2. Webworks admits the allegations in paragraph 2.
3. Webworks lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3 and therefore denies the same.
4. Webworks denies the allegations in paragraph 4.

5. In response to paragraph 5, whether this Court has subject matter jurisdiction over this action is a legal conclusion to which no response by Webworks is required. To the extent a response is required, Webworks lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

6. In response to paragraph 6, whether this Court has subject matter jurisdiction over this action is a legal conclusion to which no response by Webworks is required. To the extent a response is required, Webworks lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

7. In response to paragraph 7, Webworks admits that it maintains a place of business in Utah. The remaining allegations in paragraph 7 are legal conclusions to which no response by Webworks is required. To the extent a response is required, Webworks lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

8. In response to paragraph 8, whether venue is proper in this Court is a legal conclusion to which no response by Webworks is required. To the extent a response is required, Webworks lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

9. Webworks denies the allegations in paragraph 9 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

10. Webworks denies the allegations in paragraph 10 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

11. Webworks denies the allegations in paragraph 11 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

12. Webworks denies the allegations in paragraph 12 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

13. Webworks denies the allegations in paragraph 13 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

14. Webworks denies the allegations in paragraph 9 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

15. Webworks denies the allegations in paragraph 15 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

16. Webworks denies the allegations in paragraph 16 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

17. Webworks denies the allegations in paragraph 17 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

18. Webworks denies the allegations in paragraph 18 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

19. Webworks denies the allegations in paragraph 19 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

20. Webworks denies the allegations in paragraph 20 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

21. Webworks denies the allegations in paragraph 21 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

22. Webworks denies the allegations in paragraph 22 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

23. Webworks denies the allegations in paragraph 23 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

24. Webworks denies the allegations in paragraph 24 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

25. Webworks denies the allegations in paragraph 25 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

26. Webworks denies the allegations in paragraph 26 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

27. Webworks denies the allegations in paragraph 27 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

28. Webworks denies the allegations in paragraph 28 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

29. Webworks lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 29 and therefore denies the same.

30. Webworks lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 30 and therefore denies the same.

31. Webworks lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 31 and therefore denies the same.

32. Webworks lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 32 and therefore denies the same.

33. Webworks admits that Google has not authorized Webworks use of Google's trademark and has not sponsored any of Webworks' websites. Webworks otherwise denies the allegations in paragraph 33 insofar as they pertain to Webworks.

34. Webworks lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 34 and therefore denies the same.

35. Webworks lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 35 and therefore denies the same.

36. Webworks lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 36 and therefore denies the same.

37. Webworks lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 37 and therefore denies the same.

38. Webworks lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 38 and therefore denies the same.

39. Webworks lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 39 and therefore denies the same.

40. Webworks admits that the complaint referenced in paragraph 40 has been filed against it and affirmatively alleges that the complaint speaks for itself. Webworks otherwise denies the allegations in paragraph 40.

41. Webworks affirmatively alleges that the complaint referenced in paragraph 41 speaks for itself. Webworks otherwise denies the allegations in paragraph 41.

42. Webworks affirmatively alleges that the complaint referenced in paragraph 42 speaks for itself. Webworks otherwise denies the allegations in paragraph 42.

43. Webworks affirmatively alleges that the complaint referenced in paragraph 43 speaks for itself. In response to the remaining allegations, Webworks denies them insofar as they pertain to Webworks, and otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

#### **FIRST CLAIM FOR RELIEF**

44. Webworks incorporates by this reference its answers to all other preceding paragraphs of the complaint as if fully set forth herein.

45. Webworks lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 45 and therefore denies the same.

46. Webworks lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 46 and therefore denies the same.

47. Webworks denies the allegations in paragraph 47 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

48. Webworks denies the allegations in paragraph 48 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

49. Webworks denies the allegations in paragraph 49 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

50. Webworks denies the allegations in paragraph 50 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

51. Webworks denies the allegations in paragraph 51 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

52. Webworks denies the allegations in paragraph 52 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

### **SECOND CLAIM FOR RELIEF**

53. Webworks incorporates by this reference its answers to all other preceding paragraphs of the complaint as if fully set forth herein.

54. Webworks denies the allegations in paragraph 54 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

55. Webworks denies the allegations in paragraph 55 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

56. Webworks denies the allegations in paragraph 56 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

57. Webworks denies the allegations in paragraph 57 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

58. Webworks denies the allegations in paragraph 58 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

### **THIRD CLAIM FOR RELIEF**

59. Webworks incorporates by this reference its answers to all other preceding paragraphs of the complaint as if fully set forth herein.

60. Webworks lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 60 and therefore denies the same.

61. Webworks denies the allegations in paragraph 61 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

62. Webworks denies the allegations in paragraph 62 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

63. Webworks denies the allegations in paragraph 63 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.



#### **FOURTH CLAIM FOR RELIEF**

64. Webworks incorporates by this reference its answers to all other preceding paragraphs of the complaint as if fully set forth herein.

65. The allegations in paragraph 65 are not directed to Webworks and therefore no response by Webworks is required. To the extent a response is required, Webworks lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

66. The allegations in paragraph 66 are not directed to Webworks and therefore no response by Webworks is required. To the extent a response is required, Webworks lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

67. The allegations in paragraph 67 are not directed to Webworks and therefore no response by Webworks is required. To the extent a response is required, Webworks lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

68. The allegations in paragraph 68 are not directed to Webworks and therefore no response by Webworks is required. To the extent a response is required, Webworks lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

69. The allegations in paragraph 69 are not directed to Webworks and therefore no response by Webworks is required. To the extent a response is required, Webworks lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

70. The allegations in paragraph 70 are not directed to Webworks and therefore no response by Webworks is required. To the extent a response is required, Webworks lacks

knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

71. The allegations in paragraph 71 are not directed to Webworks and therefore no response by Webworks is required. To the extent a response is required, Webworks lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

#### **FIFTH CLAIM FOR RELIEF**

72. Webworks incorporates by this reference its answers to all other preceding paragraphs of the complaint as if fully set forth herein.

73. Webworks denies the allegations in paragraph 73 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

74. Webworks denies the allegations in paragraph 74 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

75. Webworks denies the allegations in paragraph 75 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

76. Webworks denies the allegations in paragraph 76 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

77. Webworks denies the allegations in paragraph 77 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

### **SIXTH CLAIM FOR RELIEF**

78. Webworks incorporates by this reference its answers to all other preceding paragraphs of the complaint as if fully set forth herein.

79. Webworks denies the allegations in paragraph 79 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

80. Webworks denies the allegations in paragraph 80 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

81. Webworks denies the allegations in paragraph 81 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

82. Webworks denies the allegations in paragraph 82 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

### **SEVENTH CLAIM FOR RELIEF**

83. Webworks incorporates by this reference its answers to all other preceding paragraphs of the complaint as if fully set forth herein.

84. Webworks lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 84 and therefore denies the same.

85. Webworks denies the allegations in paragraph 85 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

86. Webworks denies the allegations in paragraph 86 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

87. Webworks denies the allegations in paragraph 87 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

88. Webworks denies the allegations in paragraph 88 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

#### **EIGHTH CLAIM FOR RELIEF**

89. Webworks incorporates by this reference its answers to all other preceding paragraphs of the complaint as if fully set forth herein.

90. Webworks denies the allegations in paragraph 90 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

91. Webworks denies the allegations in paragraph 91 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

92. Webworks denies the allegations in paragraph 92 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

93. Webworks denies the allegations in paragraph 93 insofar as they pertain to Webworks. Webworks otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

94. The allegations in paragraph 94 are legal conclusions or other non-factual allegations to which no response by Webworks is required.

#### **GENERAL DENIAL**

Webworks denies each allegation of the complaint not expressly admitted herein, including without limitation all allegations contained in the introduction to the complaint and prayer for relief.

#### **AFFIRMATIVE DEFENSES**

##### **FIRST DEFENSE**

Plaintiff's complaint fails to state a claim against Webworks for which the relief sought or any relief may be granted.

##### **SECOND DEFENSE**

Plaintiff's claims, or some of them, are barred by Plaintiff's failure to join necessary and/or indispensable parties.

##### **THIRD DEFENSE**

Plaintiff's claims, or some of them, are barred by lack of privity.

##### **FOURTH DEFENSE**

Plaintiff's claims, or some of them, are barred by the doctrines of waiver, estoppel, laches, and *in pari delicto*.

##### **FIFTH DEFENSE**

Plaintiff's claims, or some of them, are barred by Plaintiff's unclean hands, inequitable conduct, and for reasons of public policy.

##### **SIXTH DEFENSE**

All claims against Webworks are barred, in whole or in part, because the Plaintiff's alleged damages, if any, were caused solely by the acts, wrongs, or omissions of the Plaintiff

herself, by intervening causes, or by other persons or entities over whom Webworks had no control and for which Webworks is not responsible.

#### **SEVENTH DEFENSE**

All claims against Webworks are barred, in whole or in part, due to the Plaintiff's failure to take reasonable steps to mitigate damages.

#### **EIGHTH DEFENSE**

The damages suffered by the Plaintiff, if any, are due to the contributory fault of the Plaintiff and to the comparative fault of others, including those named as Defendants in this matter.

#### **NINTH DEFENSE**

All claims against Webworks are barred, in whole or in part, because the alleged conduct of Webworks was undertaken in good faith and for a valid business purpose.

#### **TENTH DEFENSE**

Plaintiff's claims, or some of them, are barred or limited by contract.

#### **ELEVENTH DEFENSE**

Plaintiff's claims, or some of them, are barred by the doctrines of ratification and/or election of remedies.

#### **TWELFTH DEFENSE**

All claims against Webworks are barred, in whole or in part, because Plaintiff assumed the risk of the damages of which Plaintiff complains.

#### **THIRTEENTH DEFENSE**

To the extent the Plaintiff's alleged injuries and/or causes of action arose prior to the applicable prescriptive or statutory period, Plaintiff's claims are barred, in whole or in part, by the applicable statutes of limitations and/or the statute of repose.

**FOURTEENTH DEFENSE**

Plaintiff's claims, or some of them, are barred by Plaintiff's own contributory fault, which fault exceeds the fault of Webworks, the Doe Defendants, and non-parties to whom fault must be allocated.

**FIFTEENTH DEFENSE**

Plaintiff's claims, or some of them, are barred because Plaintiff failed to provide notice to Webworks.

**SIXTEENTH DEFENSE**

Plaintiff is not entitled to relief because it suffered no injury, or no injury caused by Webworks, including the defense of no damages.

**SEVENTEENTH DEFENSE**

Plaintiff's claims, or some of them, are barred by Plaintiff's failure to mitigate its damages, if any.

**EIGHTEENTH DEFENSE**

Plaintiff's damages, if any, were the result of superseding events, factors, or occurrences or conditions which were in no way caused by Webworks and for which Webworks may be held liable.

**NINETEENTH DEFENSE**

Plaintiff's claims, or some of them, are barred because Plaintiff lacks standing.

**TWENTIETH DEFENSE**

Webworks actions respecting the subject matters alleged in the claims, and each of them, were undertaken in good faith with the absence of malicious or willful intent to injure Plaintiffs.

**TWENTY FIRST DEFENSE**

Plaintiffs' claimed damages may not be recovered as they are remote, speculative, and contingent.

**TWENTY SECOND DEFENSE**

Plaintiffs' claims, or some of them, are barred because Plaintiff's claimed trademarks are unenforceable or otherwise improperly asserted.

**TWENTY THIRD DEFENSE**

Plaintiffs' claims, or some of them, are barred because Webworks' use of Plaintiff's claimed trademarks, if any, was undertaken with Plaintiff's express or implied consent.

**TWENTY FOURTH DEFENSE**

Webworks reserves the right to rely on any defenses asserted by any other party to this action and reserves the right to rely on affirmative defenses that become available or appear during discovery proceedings in this action.

WHEREFORE, Webworks demands that Plaintiff's complaint be dismissed with prejudice and that it be awarded nothing thereby, that Webworks be awarded its costs and attorneys' fees incurred herein, and that the Court order such other and further relief as may be necessary and appropriate in the circumstances.

DATED this 27<sup>th</sup> day of January, 2010

**SNELL & WILMER, L.L.P.**

/s/ Todd M. Shaughnessy

Todd M. Shaughnessy  
*Attorney for Defendant*



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on January 27, 2010, I electronically filed the foregoing **ANSWER** with the Clerk of Court using the CM/ECF system which sent notification of such filing to the following:

George Haley  
Blaine B. Benard  
Craig Buschmann  
Holme Roberts & Owen LLP  
299 South Main Street, Suite 1800  
Salt Lake City, Utah 84111-2263

Roger R. Myers  
Holme Roberts & Owen LLP (SF)  
560 Mission St 25th Fl  
San Francisco CA 94105-2994

Scott R. Bialecki  
Holme Roberts & Owen LLP (Den)  
1700 Lincoln St Ste 4100  
Denver , CO 80203

\_\_\_\_\_  
/s/ Debbie Withers